IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3429 OF 1996

PROF. ARUN SHRIRAM GOGATE)
residing at Jamsande, Devgad,)
Dist. Sindhudurg) .. PETITIONER

Versus

1. PRINCIPAL,)
S.H. Kelkar College of Arts)
Commerce & Science, Devgad,)
Dist. Sindhudurg)

2. UNIVERSITY OF MUMBAI)
Fort, Mumbai.)

3. ADMINISTRATIVE OFFICER)
Dy. Director of Education)
(Higher) Kolhapur.) .. RESPONDENTS

Mr. H.S.S. Murthy for petitioner
Mr. P. N. Shastri for respondent 1
Ms. P.S. Cardozo, AGP for respondent 3

CORAM:-SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.
DATE ON WHICH THE
JUDGMENT RESERVED:-10/10/2006
DATE ON WHICH THE
JUDGMENT DELIVERED:-18/10/2006

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. In this petition filed under Article 226 and 227 of the Constitution of India, the petitioner has prayed that the judgment and order dated 26/3/96 rendered by the University and College Tribunal, Mumbai in Appeal No. 27 of 1994 be set aside and the petitioner be reinstated on the post of Part-Time Lecturer in Business Law in S. H. Kelkar College of Arts & Science, Devgad, District Sindhudurg, with full back salary and emoluments.

2. According to the petitioner he has been working as part-time lecturer in Business Law in S.H. Kelkar College, Devgad. The petitioner was appointed on 1/7/83 as part-time lecturer in Business Law and he has been working in the said

post since 1/7/83 without any break. According to the petitioner his performance is satisfactory and there is no complaint about his work.

3. It is the case of the petitioner that the lectures are held separately for English and Marathi mediums and there are two separate classes for S.Y. B.Com. From 1983 the petitioner was allotted four lectures in Marathi medium and four lectures in English medium per week. According to the petitioner as per Mumbai University statute 449(1)(a) the part-time lecturer is entitled to the revised scale of part-time teacher, if he takes minimum eight and maximum 11 lectures. The part time teacher also is entitled to all other benefits.

4. According to the petitioner as he had been taking eight lectures per week, he was given approval as part-time teacher by the University and his salary was treated admissible by the education department.

5. According to the petitioner since 1983 he has been teaching two separate divisions, one of Marathi medium and another of English medium. The

petitioner contends that his appointment as part-time teacher was duly approved by the Mumbai University and the education department held his part-time salary admissible and was accordingly paid.

6. According to the petitioner, since 1983 it was felt necessary to hold two separate classes for English and Marathi mediums. Since 1983 the petitioner had been teaching two classes. He used to take eight lectures in aggregate.

7. On 27/4/94 the Principal of S.H. Kelkar College informed the petitioner that since the 3rd respondent i.e. the Administrative Officer, Deputy Director of Education (Higher) Kolhapur, had instructed that workload of Business Law would not be held admissible and workload of four lectures was only admissible, his services could not be continued and he would be continued on lecture basis. By letter dated 12/5/94 the petitioner informed respondent 1 that there was no propriety in making any change in the lectures and he was not ready to accept hourly basis post. According to the petitioner after he informed the 1st respondent that hourly appointment was not acceptable to

him,his services were not terminated. He, therefore, believed that his services are continued.

8. On 20/6/94 after the college reopened after vacation the petitioner went to attend the college. He found that his name was not mentioned on the muster roll. The petitioner made inquiries with the office but no work was allotted to him. According to the petitioner the said act of the management was nothing but otherwise termination of his services. The petitioner, therefore, filed an appeal in the University and College Tribunal, Mumbai, making grievance about his otherwise termination.

9. The management denied the case of the petitioner. According to the management the petitioner was allotted eight lectures, four in English medium and four in Marathi medium in the subject of Business Law and it was held admissible upto 1983-84. However, due to reduction in the students strength there was decrease in workload. Administrative Officer, therefore, raised an objection for continuation of the appellant on part-time basis. He was offered work on clock hour

basis. There was no termination of the appellant's service.

10. By the impugned order the Tribunal dismissed the appeal and hence this writ petition.

11. We have heard at some length Mr. Murthy, the learned counsel appearing for the petitioner. Mr. Shastri, learned counsel appearing for respondent 1 and Ms. Cardozo, the learned AGP for respondent 3.

12. Mr. Murthy contended that the Tribunal was wrong in holding that the petitioner was continued as part-timer. He submitted that part-time teacher is distinct and separate category from hourly basis teachers. A part-time teacher is a regular employee of college whereas hourly basis teacher is not a regular employee but he performs duty on contract basis. He submitted that under Statute 449 minimum eight lecture's workload is prescribed and the petitioner has been taking eight lectures in two classes of English and Marathi mediums. He submitted that the Tribunal has wrongly interpreted Resolution dated 17/8/91.

13. Mr. Murthy further submitted that the

Tribunal ignored the fact that the petitioner who had been working as part-time teacher is a regular employee of the college and as such is entitled to all the benefits which are available to a regular employee and converting a regular part-time teacher into hourly basis teacher amounts to termination. He submitted that Resolution dated 17/8/91 does not empower the management to terminate services of confirmed teacher or reduce his salary unreasonably. Mr. Murthy contended that the Tribunal has failed to appreciate these submissions and, therefore, the impugned order should be set aside.

14. The learned counsel for the 1st respondent on the other hand submitted that no interference is necessary with the impugned order which is well reasoned.

15. We have given due consideration to the submissions advanced by both sides. We are of the opinion that the Tribunal's order is legal and merits no interference. It is true that the petitioner was continued as part-time lecturer from the year 1984-85. On 15/2/79 the Government extended the benefit of revised UGC scale of pay

effective from 1/1/73 to the part-time teachers employed by various private managements of non-Government colleges in the State. The scale was Rs.350-650 Assessment-800, however that scale was for part-time teachers who had adequate workload. Thus part-time teachers who had workload of less than eight periods per week were to be paid on honorarium basis.

16. It appears that the Government then passed Resolution dated 17/8/91. This resolution prescribed payscale of Rs.1100-2000 with effect from 1/1/86. This was payable to those who were having workload of 12 periods or more of 50 minutes each per week. However, those who were having workload of less than nine or ten periods per week of 50 minutes were to be paid on honorarium basis.

17. It appears that on 6/1/94 the petitioner was asked by the management whether he would be agreeable to accept honorarium on clock hour basis. The petitioner, however, did not exercise his option not to accept the revised scale. It is the case of the respondent that from the record it is apparent that the petitioner accepted revised payscale of Rs.1100-2000.

18. It appears that thereafter the management found that the workload was less than 9 or 10 period per week. Obviously, therefore, the petitioner could not have been paid as per the payscale of Rs.1100-2000. If the required workload was not available, the benefit of revised payscale could not have been given to the petitioner. The Tribunal has rightly held that since the petitioner had accepted the revised payscale then he must bear the consequences of reduction in workload. He cannot then be given benefit of the revised payscale. He cannot make a grievance. The Tribunal has rightly taken a view that the petitioner was not retrenched nor were his services terminated. The petitioner was merely informed that there is a reduction in workload and hence he would be paid on honorarium basis. The Tribunal has rightly held that the petitioner continued to be a part-time teacher. Only his mode of payment changed.

19. The petitioner is a practising advocate. He appears to have rendered good service to the 1st respondent. It appears that because the workload was reduced, the 1st respondent was placed in a

predicament and, therefore, it had to request the petitioner to state whether he would work on honorarium basis. There is no indication in the record that the management in any way wanted to terminate the services of the petitioner or retrench him. The management was faced with circumstances which were beyond it's control. Tribunal is right in holding that there was no termination or retrenchment of the petitioner's service.

20. In the circumstances, in our opinion, the impugned order does not deserve to be disturbed. Petition is dismissed.

(SMT. RANJANA DESAI, J.)

(SMT. V. K. TAHILRAMANI, J.)